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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1979

No. 79-1256

TURLOCK IRRIGATION DISTRICT and
MODESTO IRRIGATION DISTRICT,
Petitioners,

vs.

CITY AND COUNTY OF SAN FRANCISCO,
Respondent.

PETITIONERS' REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

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The Solicitor General of the United States states that "the decision of the court of appeals is clearly wrong" and "flies in the face of congressional intent" in the Raker Act, explaining:

> "The United States agrees with petitioners that the court of appeals erred in its construction of the Raker Act. The plain language of Sections 9(m) and (o) of the Act, together with the Act's legislative history, establish that Congress envisioned that rates charged by San Francisco for Hetch Hetchy power would be reviewed by a statewide regulatory agency and that, should state law not provide for such review, the rates would be subject to approval by the Secretary. The court of appeals' conclusion that rates set by San

> Francisco's local Public Utilities Commission conform to the laws of California and therefore do not require Secretarial approval flies in the face of congressional intent that there be an independent check on the municipality's authority to set excessive rates for Hetch Hetchy power" (Memorandum for the United States, p. 5).

The Solicitor General then, however, apparently influenced by the Secretary of the Interior (see Appx. A to the City's brief),[1] suggests that the case may lack such "general importance" as to justify review (Memorandum for the United States, p. 5).

It is plain, we submit, that review should be granted in this case because it involves the same issue of national policy as *U. S.* v. *San Francisco* (1940) 310 U.S. 16. The City purports to distinguish this Court's prior review of the Raker Act in *U.S.* v. *San Francisco* with the assertion that that case "involved important constitutional issues involving the power of Congress over Federal property" while this case "involves no constitutional issue at all" (City brief, p. 10). In transparent truth, both cases involve the same issue of whether the Court will require the enforcement, and not permit the derogation in the court of appeals, of conditions imposed by the Congress in a perpetual grant of Federal lands and rights. In *U. S.* v. *San Francisco,* after observing that "Article 4, § 3, Cl. 2 of the

[1]A basic responsibility of this Court is preservation of the rule of law. This Court does not sit to allow a Secretary of the Interior to "relinquish" statutory responsibilities, whether to advance passing political purposes (see the Districts' petition, n. 4, pp. 5-6) or because of a claimed lack of regulatory "expertise" (see City br., p. 9). The rule of law does not permit Federal grants, to San Francisco or New York or any other city, to be stripped of conditions specified by the Congress.

Constitution provides that 'The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory and other Property belonging to the United States'," this Court reversed the court of appeals and stated:

> "The City is availing itself of valuable rights and privileges granted by the Government and yet persists in violating the very conditions upon which those benefits were granted. * * * [T]he present suit was instituted to enforce covenants exacted from a grantee of rights in the public domain by a Congress sympathetic with the local needs of San Francisco but also jealous of its own responsibility to dispose of such rights in a manner deemed by it most likely to render their benefits widespread" (310 U.S. 30-31).

The City's attempted evasion of a Raker Act condition in this case would have the same adverse result as its attempted evasion in *U. S.* v. *San Francisco,* namely, instead of making Hetch Hetchy power available at low cost in competition with PG&E power, the City would be selling Hetch Hetchy power at PG&E rates, contrary to the congressional intent. Unless the congressional intent is given effect, not only will this generation of Hetch Hetchy power users be mulcted by the City, so will future generations.

It was precisely to assure that Hetch Hetchy power would be supplied at low rates based upon the cost of hydroelectric generation that the Congress did not leave the City free of rate oversight by state authorities or the Secretary of the Interior. The City's suggestion that "regulation of Hetch Hetchy power rates under state law" meant only that the State of California must have a judicial

system that can generally review whether City conduct is authorized by state law is plainly wrong.[2] Assuming that the Raker Act would permit more than one type of state regulation, the City concedes that there is *no* statewide regulatory control over Hetch Hetchy power rates (City br., p. 11). The alternative specified by the Congress—rate approval by the Secretary of the Interior—is thus clearly applicable (see the Memorandum for the United States, p. 5, and the Districts' petition, pp. 9-13).

Correction of a manifest error in this case will be accompanied by prevention of a manifest injustice. In the process of attempting to wring windfall profits from Hetch Hetchy power, contrary to the declared congressional purpose,[3] the City is threatening serious economic impact on the Districts' residents, who since 1945 have been the principal

[2]The City summarizes its argument as follows: "In sum, San Francisco does not set rates for Hetch Hetchy power in a legal vacuum. It acts by virtue of authority delegated by the State" (City br., p. 16). Obviously, *all* actions of the City must be pursuant to authority delegated by the State. That has nothing whatever to do with the regulatory conditions imposed on Hetch Hetchy power rates by the Congress in the Raker Act.

[3]That San Francisco, along with New York, Chicago and other cities, has problems of municipal finance is not a permissible basis for striking conditions from a Federal grant, nor is an effort to derive excess profits from Hetch Hetchy power a practical or sensible solution to San Francisco's financial problems.

users of Hetch Hetchy power at rates approved by the Secretary of the Interior.[4]

The petition should be granted.

Respectfully submitted,

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[4]The City's assertion that the Secretary of the Interior "did not purport to review the City's rates [in contracts with the Districts] under any authority conferred by sections 9(m) and 9(o) of the Raker Act" (City br., p. 18) is false. The City *admitted* in its answer to allegations of paragraph 6 of the Districts' complaint that "Defendant [City] submitted [the current] contracts as it has submitted all such prior contracts with plaintiff irrigation districts to the Secretary of the Interior of the United States, *who approved the rates set forth therein pursuant to provisions of the Raker Act*" (emphasis supplied).